

UN Peacekeeping and The Model Status of Forces Agreement

UNITED NATIONS PEACEKEEPING LAW REFORM PROJECT
SCHOOL OF LAW, UNIVERSITY OF ESSEX

UN Peacekeeping and The Model Status of Forces Agreement: Experts' Workshop

UNITED NATIONS PEACEKEEPING LAW REFORM PROJECT

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1. Project Overview

The immense growth of United Nations (UN) peacekeeping in quantitative, qualitative and normative terms is one of the major developments of the post-Cold War era. Peacekeeping has become a key activity of the UN, despite the fact that it was not envisaged in the Charter. While UN peacekeeping reform has been a focus of broad ranging discussions since the late 1980s, limited consideration has been given to how legal issues may impede or enhance the effectiveness of UN peacekeeping. The UN Peacekeeping Law Reform Project (the Project) was set up to identify these issues and, drawing heavily on a combination of practical and academic expertise, to recommend concrete ways to improve UN peacekeeping.

One of the Project's primary areas of work is the preparation of a report on the Model UN Status of Forces Agreement (Model SOFA) (A/45/594). The report is being developed through a process of research and broad consultation. This is a reflection of the range of expertise and experience that is required to form a full picture of the issues. The process commenced with initial consultations with UN Member States and others in New York in April 2010. A following stage of consultations took place at an Experts' Workshop held in London in August 2010. A background paper was prepared to form the basis for discussions at that workshop. The executive summary of that background paper, as well as a summary of the workshop discussions, are below. Drawing upon the ongoing consultations and the discussions at the Experts' Workshop, the background paper is being built upon and developed into a final report, which will be provided to the UN peacekeeping community in 2011.

The aim of the Project's work on the Model SOFA is to consider whether updating the Model SOFA is necessary due to the evolution of UN peacekeeping and the resulting changes in the body of UN peacekeeping and legal practice since the Model SOFA was promulgated. To facilitate the effective execution of UN Security Council mandates and ensure that UN peacekeepers are appropriately protected and supported, it is essential that missions operate within a clear legal framework that reflects their mandate and activities. The Model SOFA should support and not hinder the important work of UN peacekeepers.

2. Experts' Workshop – Summary

The Experts' Workshop was held in London in August 2010. It was co-chaired by Professor Sir Nigel Rodley and Scott Sheeran of the University of Essex. The international experts that participated were drawn from a spectrum of countries and had a broad range of expertise and backgrounds. They included senior military and police officers, UN and government officials, academics and NGO representatives, many of whom had experience working in UN peacekeeping operations. The Workshop was conducted under the Chatham House Rule.

Discussion of the Model SOFA at the Workshop was geared toward addressing the following issues:

- Issue 1: Generally, does the Model SOFA promulgated in 1990 still reflect the requirements of UN peacekeeping and the purpose of a model?
- Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?
 - a) Additional categories of UN peacekeeping personnel
 - b) Safety of UN personnel and the Convention
 - c) Respect for International Humanitarian Law
 - d) Respect for International Human Rights Law
 - e) UN communications, satellite and radio
 - f) Facilities and premises for the UN
 - g) Freedom of movement of UN personnel
 - h) Use of force (in self-defence and to protect civilians)
 - i) The activities of a UN peacekeeping mission and the work of the ICC
 - j) Third party claims and the limited liability of the UN
- Issue 3: Are there other issues in the Model SOFA, in light of UN practices and developments, that need to be considered?
- Issue 4: Is there a case for considering an update to the Model SOFA and if so, how should this be done?

There was a general recognition among the group that the nature of UN peacekeeping had changed significantly since promulgation of the Model SOFA in 1990. Several participants indicated that, in their view, as a result of these changes the Model UN SOFA no longer reflected the requirements of UN peacekeeping and required review. Other participants cautioned that the fundamental elements of the SOFA should not be reopened.

The problem of the interim application of the Model SOFA was raised. It was highlighted that the appropriateness of the content and coverage of the Model SOFA is particularly important during the period of interim application, so as to assist the start-up of the operation and not to leave the UN exposed. There was broad recognition that the Model SOFA was often applied provisionally for a much longer period than intended by the Security Council. In the view of several participants, a stronger Model SOFA may reduce the opportunities for tension and protracted negotiations, and thereby hasten the agreement of an effective SOFA.

Several participants noted the difficulty of crafting a Model SOFA that would cover the spectrum of UN peace operations. One participant suggested that it might be possible for a revised Model SOFA to take the form of a menu, with provisions that could be included/excluded based on the particular situation.

There was general agreement that the spectrum of personnel employed was an important feature of UN peacekeeping operations, but one which was inadequately addressed in the Model SOFA. Certain

categories of personnel, such as UN Volunteers (UNVs) and the different types of contractors are not addressed in the Model SOFA. It was noted that this issue had been dealt with in different ways in several mission-specific SOFAs. There was consensus that different categories of personnel needed to be covered by the Model SOFA, but that there were significant concerns with regard to generally extending immunities to certain categories of personnel such as contractors.

All agreed that the safety and security of peacekeepers was centrally important. Some participants felt that relevant aspects of the 1994 Convention on the Safety of United Nations and Associated Personnel could be sensibly included in the Model SOFA, in line with practice and the request of the Special Committee on Peacekeeping Operations.

The Model SOFA includes nothing on International Humanitarian Law (IHL) or International Human Rights Law (IHRL). While mission-specific SOFAs concluded after the adoption of the 1999 Secretary-General's Bulletin on IHL contained references to the Bulletin, none include a reference to IHRL, although it is recognised in UN instruments that IHRL may apply to UN peacekeeping operations. References to IHL in mission-specific SOFAs do not explain the scope of the rules, just that the body of law applies. There was general agreement that the incorporation of a reference to the application of IHL in the Model SOFA would be welcomed. Several participants indicated that such a reference should be general and minimal. Most participants indicated their support for the inclusion of a provision that affirmed the application of IHRL in the Model SOFA, and it was suggested that a similar approach might be taken as with IHL – not explaining the scope of the rules, rather just confirming that parts of the body of law may be applicable. A participant questioned the necessity for articulating applicable bodies of law. It was acknowledged that one of the purposes of reviewing the SOFA was to make clearer the regulatory framework that already exists, and that while a SOFA might not necessarily provide operational clarity on the application of the different bodies of law, it could provide a more coherent picture of the existing framework, and guidance on where to turn for further detail.

It was asserted that in practice the issue of appropriate detention procedures needed to be addressed at the beginning of a peacekeeping operation. To do so required consideration of the mission's legal powers of policing, detention, review and the power to transfer to national authorities. To do this one could not avoid consideration the application of IHRL.

It was noted that many complications arise with the use of different types of communications equipment in UN peacekeeping operations, and that the relevant provisions of the Model SOFA require clarification. On the issue of freedom of movement, it was noted that in reviewing recent mission-specific SOFAs, it became evident that the language on freedom of movement has been strengthened in a number of instances e.g. 'freedom of movement without delay'. Several participants highlighted the importance of UN peacekeepers having freedom of movement by air, ground and sea, in order to carry out their mission and that this should be reflected in the SOFA.

Some mission-specific SOFAs concluded by the UN had not included the Model SOFA provision regarding respecting local law. There was extended discussion on the language used in the Model SOFA. The general feeling was that the provision was an important one for the UN to follow, and although the language in the Model SOFA may not be the perfect formulation of the concept, opening that particular language might create more problems than it would solve.

It was agreed that there is a huge expectation for UN accountability in peacekeeping operations. It is important for justice to be done and to be seen to be done by those concerned, in order to strengthen relations between the mission and the local population. This was an important part of the UN's 'zero tolerance' policy towards sexual exploitation and abuse. There was recognition by

participants that accountability was a complicated and multifaceted issue for UN peacekeeping, and that there exists a multitude of accountability mechanisms that needed to be implemented. One aspect was that the Model SOFA should be consistent with the MOU between the UN and troop contributing States. On the issue of third party claims and the limited liability of the UN, it was noted that there is a need for an improved compliance mechanism in the Model SOFA, otherwise the UN's accountability is undermined.

There was support in the Workshop for including a reference to the UN's relationship agreement with the ICC in the Model SOFA. However, some questioned whether this was necessary as the law and practice in this area is dynamic and still developing.

There is recognition across UN organs that UN peacekeepers have the right to use force in self-defence and in defence of the mandate. However, there is a gap of sorts in that the Model SOFA does not speak of any right to use force, for example, in self-defence. While this might not be a legal issue when there is a Ch VII mandate setting out the right to use force, in non-Ch VII mandated missions there may be nothing in the mandate or the SOFA regarding the use of force. In these situations, the Rules of Engagement (RoE) will reflect a mission's legal and/or policy settings to use force in such circumstances. However, the question remains whether the right to use force should be set out in the agreement between the UN and the host State rather than implied. There was broad ranging discussion on the use of force. Several participants thought that use of force issues should always be dealt with in the mandate by the Council, while others sought explicit legal coverage for the use of force by UN peacekeepers in the SOFA. It was recognised that this was a difficult issue, which may be challenging to reduce to a formulation for inclusion in the Model SOFA.

Several additional issues, not identified in the Background Paper were raised. A number of participants suggested that there is a need for a provision in the Model SOFA to protect against degradation of the host State's environment and unsustainable absorption of natural resources by the UN operation. Separately, several participants indicated they were in favour of including a general statement on the applicability of international law. Others supported reference to the inclusion of internationally agreed instruments particularly in the areas of IHRL. The role of Non-State Actors was also raised, however, it was noted that it would be very difficult to reference them in the SOFA, as the SOFA is agreed between the host State Government and UN. It was noted that the UN and host government officials often had little awareness of the SOFA and its provisions. A proposal was well supported that there should be an undertaking in the Model SOFA on both sides to disseminate knowledge of the SOFA arrangements to relevant UN and host government officials.

The general feeling of the participants was to support a review of the Model SOFA along the lines set out in the Background Paper and discussions in the Workshop. It was recognised that the essence of the Model SOFA was very good, but that particular areas would benefit from being updated or revised. Several participants expressed the view that the Model SOFA is a template, and should be an ideal, representing best practices. It was recognised that in reviewing the Model SOFA it would be important to always keep in mind the purpose of the instrument. It should be to act as a guide in negotiations and be complete enough for provisional application. For these reasons it should not start at a point less than what was expected and needed for the effective functioning of a UN peacekeeping operation.

3. Experts' Workshop – Discussions

Introductory Session and Participants

Participants were welcomed by Brigadier Philip Gibbons of the New Zealand Defence Force, who was the representative of the New Zealand Government, which had assisted in hosting the Experts' Workshop. The Co-chairs, Professor Sir Nigel Rodley and Scott Sheeran of the University of Essex, provided an introduction to the Project, and the Experts' Workshop. The International experts that participated were drawn from a spectrum of countries and had a broad range of expertise and backgrounds. They included senior military and police officers, UN and government officials, academics and NGO representatives, many of whom had experience working in UN peacekeeping operations. The list of experts is provided in Annex I to this summary paper. The Workshop was conducted under Chatham House Rule.

UN Peacekeeping and the Model SOFA

Participants had been provided the Background Paper 'UN Peacekeeping and the Model SOFA'. In introducing the session, the Co-chair spoke to the Background Paper, highlighting several of the key issues for consideration by the group. Discussion of UN Peacekeeping and the Model SOFA proceeded through a process of addressing each of the following issues:

- **Issue 1: Generally, does the Model SOFA promulgated in 1990 still reflect the requirements of UN peacekeeping and the purpose of a model?**
- **Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?**
 - k) **Additional categories of UN peacekeeping personnel**
 - l) **Safety of UN personnel and the Convention**
 - m) **Respect for International Humanitarian Law**
 - n) **Respect for International Human Rights Law**
 - o) **UN communications, satellite and radio**
 - p) **Facilities and premises for the UN**
 - q) **Freedom of movement of UN personnel**
 - r) **Use of force (in self-defence and to protect civilians)**
 - s) **The activities of a UN peacekeeping mission and the work of the ICC**
 - t) **Third party claims and the limited liability of the UN**
- **Issue 3: Are there other issues in the Model SOFA, in light of UN practices and developments, that need to be considered?**
- **Issue 4: Is there a case for considering an update to the Model SOFA and if so, how should this be done?**

Introduction to Report

By way of introduction to the session, the Co-chair highlighted several issues covered in the Background Paper. The Model SOFA was promulgated by the UN Secretary-General in 1990, and is the model for the mission-specific SOFAs that are agreed between the UN and a host State following the mandating of a UN peacekeeping operation. However, since the promulgation of the Model SOFA, UN peacekeeping has undergone several significant developments that are not reflected in that document. Missions have become increasingly complex and multidimensional, and have moved beyond the tasks of traditional peacekeeping. They have included military, police and civilian

personnel as well as UN Volunteers and, in some instances have worked closely with civilian contractors. Since 1990, many UN peacekeeping operations have been authorised to use a greater spectrum of force in a greater range of situations. Many missions have been authorised to carry out sensitive early peacebuilding tasks relating to, for example, the promotion of human rights and security sector reform. Some have even been provided administrative and executive functions. More recently, one mission in particular has had to deal with difficult legal issues relating to the provision of support to local security services.

He explained that the aim of the Project's work on the Model SOFA is to consider whether updating the Model SOFA is necessary due to the evolution of UN peacekeeping and the resulting changes in the body of UN legal and peacekeeping practice since the Model SOFA was promulgated. To facilitate the effective execution of UN Security Council mandates and ensure that UN peacekeepers are appropriately protected and supported, it is essential that missions operate within a clear legal framework that reflects their mandate and activities. The Co-chair went on to highlight several of the areas that might require review, setting the scene for discussion on each of those issues.

Issue 1: Generally, does the Model SOFA promulgated in 1990 still reflect the requirements of UN peacekeeping and the purpose of a model?

There was a general recognition among the group that the nature of UN peacekeeping had changed significantly since promulgation of the Model SOFA in 1990. Several participants indicated that, in their view, as a result of these changes the Model UN SOFA no longer reflected the requirements of UN peacekeeping and required review. They suggested that review should include consideration of incorporating stronger accountability mechanisms, measures to address international humanitarian law, international human rights law, additional categories of UN personnel, regional organizations, stability of the SOFA as host governments change and taking into account the constitutional provisions of the host State to ensure a solid SOFA framework.

Other participants cautioned against a substantial overhaul of the Model SOFA indicating that in their view, there was nothing fundamentally wrong with the underlying basis of the current Model SOFA, and the fundamental elements of the SOFA should not be reopened. It was indicated that OLA included additional necessary provisions in the negotiation process of mission-specific SOFAs, particularly regarding security and contractors. It was asserted that to progress a process of updating, the initiative would need a Member State sponsor.

Several participants stressed the importance of the SOFA being comprehensive and representing best practices, noting that host States would be more inclined to remove provisions than to add them when negotiating a mission-specific SOFA. It was noted that one of the advantages of a comprehensive SOFA that genuinely reflected the needs of today's UN peacekeeping operations was avoiding the problem of protracted negotiations, including on additional provisions that are necessary. Often SOFA negotiations raise tensions between the UN and the host State. In the view of several participants, a stronger Model SOFA may reduce the opportunity for tension and protracted negotiations and hasten the agreement of an effective mission-specific SOFA.

One participant highlighted a related issue, namely the interim application of the Model SOFA prior to the agreement by the UN and the host State of a mission-specific SOFA. A Chapter VII resolution can impose the interim application of the Model SOFA, but it is not clear whether the Model SOFA applies in operations in which its interim application has not been specifically mandated. The appropriateness of the content and coverage of the Model SOFA is particularly important during the period of interim application so as not to leave the UN exposed, and to assist the start-up of the

operation. It was noted that the Model SOFA was often applied provisionally for a much longer period than intended by the Security Council.

Several participants noted the difficulty of crafting a Model SOFA that would cover the spectrum of UN peace operations, from traditional and robust multidimensional peacekeeping operations to transitional administrations. Some questioned whether it would be possible to develop an instrument that is able to cover all the outstanding issues and include all the key elements of the different types of operations. One participant suggested that it might be possible for a revised Model SOFA to take the form of a menu, with provisions that could be included/excluded based on the particular situation. The same participant indicated that the Background Paper would benefit from the annexation of a separate document setting out the permutations of UN peace operations and clearly indicating the range of operations the Paper addresses. It was noted that any update could be directed at what the majority of major peacekeeping operations now did. It would not, for example, be useful to try and cover the unique and rare situations of traditional administrations, as were deployed in Timor Leste and Kosovo.

It was also highlighted that the SOFA is one layer of the UN peacekeeping legal framework, one of the available tools, so there should not be too much expectation upon what a Model SOFA can achieve, as other sources complement it and are also part of the framework. It is a means to an end, and in order to determine what revisions might need to be made, it is essential to be clear about what the end is.

A participant asserted that there was a crisis of confidence in the UN and that this is reflected in UN peacekeeping. Other participants indicated the importance of discussions being held regarding what the UN should and should not be doing in its peace operations. They noted that revising the Model SOFA could not solve all the problems in the field as many of the problems were very practical problems, and not necessarily a product of the SOFA. Concern was expressed that much high level discussion on UN peacekeeping is taking place among developed countries, however the same countries are not nor contributing personnel to, UN peacekeeping operations.

The general feeling of the group was that there was no need to reimagine the SOFA. The main issue was simply to determine whether the existing Model SOFA meets the needs of today's UN peacekeeping operations, and reflects subsequent agreements in the UN, and in those areas where it does not, to consider recommendations on possible updates and revisions.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

a) Additional categories of UN peacekeeping personnel

The Co-chair explained that there had been an increase in the employment of a range of personnel in UN peacekeeping operations who were not covered by the Model SOFA. The most prominent example was UN Volunteers (UNVs), who currently number about 2,500 and represent a significant resource for UN peacekeeping operations. UNVs often perform similar tasks to junior UN staff members and yet are not covered by the Model SOFA. One reason for this was the UN's position not to treat UNVs as staff members for administrative purposes. He pointed out that increasingly, additional language had been incorporated into negotiated mission-specific SOFAs which ensured immunities were extended to UNVs. Many types of contractors are also employed in UN peacekeeping operations and not covered by the Model SOFA. In UN practice, only a few aspects of the Model SOFA have been extended to contractors (e.g. freedom of movement).

There was general agreement that the spectrum of personnel employed was an important feature of UN peacekeeping and one which was inadequately addressed in the Model SOFA as well as other UN agreements. One of the participants indicated that this had been a major issue of concern, as host States were often reluctant to agree coverage for additional categories of personnel in mission-specific SOFAs.

It was explained that in recent SOFAs UNVs had been assimilated into the 'officials' category covered by the Model SOFA. It was suggested that this practice might be extended to the Model SOFA, as it would better reflect the reality on the ground.

The issue of how a revised Model SOFA might deal with categories of contractors generated a significant amount of discussion. One participant suggested that it might be appropriate to extend some privileges but not immunities because immunities derive from the Convention. Another participant stressed that there are many different categories of contractors – international, national, military, civilian etc and that the privileges accorded should be different for each category and should be linked with the needs of the mission. He suggested that a menu-type approach might be appropriate in this instance. He also suggested that the Project review how the NATO SOFA deals with contractors. Several participants stressed that a balance needed to be struck between immunity and accountability. One indicated that it was often found that contractor's conduct is not actually controlled by the UN. Another participant indicated that private contractors should be dealt with completely outside the SOFA, but that the State should be brought into the contract between the UN and the contractor.

With regard to local contractors, one of the participants noted that many of the staff who deliver humanitarian aid are national. They are a category of people who do essential work (drivers, interpreters etc) but are not considered 'UN personnel' and are not covered by the normal UN protections and immunities. In OHCHR this category of personnel is called 'persons performing functions' and is a category of UN staff contracted locally and on a short-term basis. Another participant highlighted the difficulty of operationalising the partial extension of privileges and immunities to local contractors, highlighting the challenges associated with proving that certain action was part of their work for the UN. He suggested that if immunity were not granted perhaps it might be possible to opt for a softer formulation (e.g. granting safe/free passage). It was clarified that the Background Paper did not raise the possibility of extension of the UN's immunities to contractors.

With regard to private security contractors several participants raised the issue of accountability and expressed concerns regarding the prospect of extending immunities to this category of personnel. Another expressed concern that international private contractors are often deployed without the necessary understanding of the regional dynamics, which can result in them exacerbating problems. He suggested that any SOFA coverage should only be partial. A further participant noted that international private contractors had become a reality of UN peacekeeping missions so needed to be dealt with appropriately. He cited an example from Liberia where private contractors had been an integral part of the UN security sector reform strategy, but were not covered by the SOFA. This had also arisen as a problem with trainers in this sector.

A participant raised the apparent gap of coverage by the Model SOFA in respect of civilians serving as part of a military contingent. He noted that Article 47 of the SOFA spoke of military and civilian personnel, but not this third category. He suggested that they should be considered contingent members and treated as such because they were serving with a national contingent. Another participant indicated that these people could be treated as part of the civilian part of the mission,

however he indicated his interest in discovering more about the practice of different States in this regard.

Several participants highlighted that an additional category of personnel potentially left exposed are national staff. Being protected by immunities is critically important for national staff carrying out certain types of work, particularly human rights advocacy work. The importance of national professional officers is particularly high in missions performing administrative functions. In those missions, national professional officers are among the few people who can ensure that the mission respects local laws, because they have the knowledge. Other categories of national staff requiring protections might include interpreters. It was acknowledged that the provision of privileges and immunities to national staff was a complex issue as it would require categorising different work e.g. the difference between human rights work and catering.

One of the participants indicated that there were more recent mission-specific SOFAs and other UN agreements (agreements with humanitarian agencies etc) that covered a wider range of categories of personnel. The question was whether it should be up to different missions to elaborate/negotiate provisions? She asserted that if it were possible, there should be provisions included in the Model SOFA which deal with the nuances between different contractors and build on what has been done in other areas UN practice. The same should be done in regard to 'persons performing functions'. These are categories that need to be regulated.

One participant concluded that in order to be embraced by the UN membership, any reform proposals needed to be minimalist. She suggested that UNVs could be classified by the UN as 'UN Staff', thereby falling under Article 46 of the Model SOFA, rather than a new provision being added. She also indicated that extending immunity to contractors would be politically impossible, but more modest provisions, such as extending certain privileges (e.g. freedom of movement or some of the points listed in para 143/134 of the Background Paper) might be possible.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

b) Safety of UN personnel and the Convention

The Co-chair explained that the application of the 1994 Convention on the Safety of United Nations and Associated Personnel in UN peacekeeping operations was somewhat unclear. One issue is that the threshold for application of the Convention is different to the Secretary-General's Bulletin on International Humanitarian Law, and different to what many think is the correct threshold under general international law.

A participant indicated that in his view, one of the main problems in the application of the Convention was the problem of interpretation, noting that the Security Council mandates Ch VII provisions in many peacekeeping mandates, but the operation is still a *peacekeeping* operation. He asserted that when an operation is not a clear-cut combat operation the unclear application of the Safety Convention resulted in peacekeepers being put in a disadvantageous position.

Two participants suggested that they were reluctant to support inclusion of any mention of the Safety Convention in the Model SOFA, because they deemed the instrument badly drafted, particularly as it criminalises some actions that are legal under IHL. Were reference to the Convention to be included in the Model SOFA, they would prefer a formula that excluded application of the Convention when the UN are party to the conflict. The general view seemed to be that protection of peacekeepers was centrally important, and that relevant aspects of the Safety

Convention could be included in line with practice and the request of the Special Committee on Peacekeeping Operations.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

- c) Respect for International Humanitarian Law**
- d) Respect for International Human Rights Law**

The Co-chair explained that the Model SOFA included nothing on International Humanitarian Law (IHL) or International Human Rights Law (IHRL). Mission-specific SOFAs concluded after the adoption of the Secretary-General's Bulletin contained references to the Bulletin. However, recently concluded SOFAs still contained no reference to IHRL although it is generally recognised that IHRL applies to UN peacekeeping operations, for example, through the standards of conduct agreed in the Model MOU between the UN and contributing countries. References to IHL in mission-specific SOFAs do not explain the scope of the relevant rules, just that the body of law applies, it was suggested that a similar approach might be taken with IHRL.

One participant highlighted that UN peacekeepers operate in multiple contexts, some in which they are operating under IHL and others under IHRL, so details of the applicability of the relevant bodies of law is important. Another participant asserted that it should be recognised that by and large, UN operations have a higher level of observance of IHRL than non-UN operations.

There was general agreement that the incorporation of a reference to the application of IHL in the Model SOFA would be welcomed. Several participants indicated that such a reference should be general and minimal, and have a different formulation from the equivalent clause in the Safety Convention. It was suggested that referencing only the Geneva Conventions and the 1954 Convention would be limiting, and a more appropriate reference might be, for example, "UN forces respect IHL when applicable".

Another participant asserted that Member States have indicated their willingness to be bound by IHL through being signatories to the Geneva Conventions and Additional Protocols. Their forces, therefore, must observe IHL, and it is perhaps more important that reference to IHL forms part of MOU than the SOFA. Another participant was of the opinion that a SOFA should not necessarily establish jurisdiction and sought a justification as to why it was necessary to include in a SOFA provisions on which bodies of law are applicable.

Most participants indicated their support for the inclusion of a provision that affirmed the application of IHRL in the Model SOFA. However, several participants highlighted that despite the evidence even within the UN family there were some people who questioned the applicability of IHRL to UN peacekeeping operations. Others asserted that while inclusion of such a provision would be positive and welcomed by many, the "where applicable" aspect must be made clear, as this is a difficult issue and there may be resistance by some who would view it as problematic.

It was also noted that recent legal rulings have demonstrated that parties 'can't get out of' IHRL obligations by signing some kind of bilateral agreement – an issue relevant also to the Model MOU. It was suggested that further consideration needed to be given to whether IHRL applies to the entirety of the mission. It was suggested that in setting out UN obligations, there may be resistance from TCC/PCCs that say that there are no obligations at all, as they do not follow the extraterritorial application theory. There had been, for example, a number of cases about to what extent IHRL applied to military forces in Iraq. It was pointed out by another participant that the obligations on the Organization in this regard were a different question to those of its component States.

One participant asserted that the issue of detention needs to be addressed at the beginning of a peacekeeping operation. The mission's legal powers of policing, detention, transfer to national authorities, and , judicial review need to be specifically set out To do this one could not avoid consideration the application of IHRL. He noted that there has been some discussion of detention through the Copenhagen process with DPKO, but highlighted that this was a pressing issue. Another participant suggested that the authority to detain should derive from the mandate or IHL if UN forces are engaged in conflict, and questioned whether the SOFA was the appropriate platform. It was suggested that consideration be given to whether the 'menu' option might be employed in the context of IHRL as well and whether these issues would be better dealt with in the SOFA or MOU.

A number of participants questioned why it was proposed that only provisions relating to the applicability of IHL and IHRL be incorporated into the Model SOFA. In their view other it is also important to recognise the application of other bodies of law, in particular, international refugee law. An issue that arose in Kosovo was who was responsible for people crossing the border. It was noted by another that affirming the application of IHL and IHRL need not suggest that there were not other relevant bodies of law also applicable.

Several participants raised the issue of accountability, noting that both IHL and IHRL present an interesting network of obligations, and it is not clear who is bound by them. In particular, it raised questions regarding the individual accountability of different actors. Some individuals are prosecutable in their own state. It was asserted that observance of the relevant bodies of law by troops should be the responsibility of the Force Commander and the contingent commander as discipline is a national responsibility. If there was a violation action should be taken against those individuals.

One participant questioned how incorporating provisions relating to IHL and IHRL in the Model SOFA would help provide operational clarity, which is so often absent for troops facing dilemmas in the field. It was responded that one of the purposes of the work was to make clearer the regulatory framework that already exists and that while a SOFA might not necessarily provide operational clarity, it could provide a more coherent picture of the existing framework, and guidance on where to turn for further detail.. The general feeling was that while inclusion of IHL and IHRL could assist, any reference needed to be general, minimalist and emphasize the application 'where applicable'.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

- e) UN communications, satellite and radio**
- f) Facilities and premises for the UN**
- g) Freedom of movement of UN personnel**

One participant noted that a lot of complications arise with the use of different types of communications equipment in UN peacekeeping operations and that paragraphs 10 & 11 of the Model SOFA needed to be clarified. Another participant queried whether encrypted communications posed a particular problem.

On the issue of facilities and premises for the UN, one participant highlighted a less recognized issue relating to distribution of premises - that of appropriation of an unsustainable number of public buildings to the UN. He explained that in UNMIK there had been a 'land grab' of all the public buildings by the UN, but acknowledged that this was probably more of an issue in transitional administration missions, such as Timor Leste and Kosovo. He suggested that 'as appropriate' may be incorporated into any new formulation.

On the issue of freedom of movement, it was noted that in reviewing recent mission-specific SOFAs, it had become evident that the language on freedom of movement has been strengthened in a number of instances e.g. 'freedom of movement without delay'. Several participants highlighted the importance of UN peacekeepers having freedom of movement by air, ground and sea, in order to carry out their mission. It was noted that it is difficult to ensure government action on incidences hindering freedom of movement (eg denial of landing permission) and suggested that there is a need to consult a wider range of actors on freedom of movement issues. One participant related that in UNAMIR the Force Commander 'neglected' to inform the government of all UN movements due to fears of how the information would be used.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

h) Respect for local laws and regulations

The Co-chair explained that some mission-specific SOFAs failed to include the Model SOFA provision relating to respecting local law. This however led to a much broader-ranging debate. There was significant discussion about the meaning and utility of the phrase 'respect local laws' found in the Model SOFA. It was established that the word 'respect' did not hold the exact meaning as 'comply with', which may be the assumption of an international lawyer. The phrase comes from the 1961 Vienna Convention on Diplomatic Relations (Art 41) and implies that the context needs to be recognized. Several participants advocated retaining the language and adding to it if necessary, noting that it is accepted language and opening it up could cause problems. Others indicated that the language was outdated and had been dealt with in a more nuanced way in the UN Staff Rules and Rules on Experts on Mission.

Several participants raised concerns regarding local laws not being in compliance with international standards. It was suggested that an improved formulation might oblige UN peacekeepers to respect the local laws in so far as they are compatible with international law. However this then raised the question as to whether the international law standard was generally applicable international law and/or those international legal instruments to which the host State was a party. An example was provided of judges in UNMIK and UNTAET who threatened to resign rather than strictly apply the local law. Another participant noted that Article 6 of the Safety Convention not only used this same 'respect' formulation, but it stated that UN personnel shall 'refrain from any action or activity incompatible with the impartial and international nature of their duties' indicating that the local law should not intrude on the fulfillment of UN goals such as basic human rights standards.

Several participants stressed the need for a level of flexibility for a number of reasons. It may not be clear what the local laws are, particularly when a mission is deployed in a failed or de facto state or in a region where customary or Sharia law apply. It was asserted that UN police need some flexibility of compliance as their investigations can be undermined by allowing interference of the criminal elite. Others suggested that exigencies of the operation may require something other than strict observance of local laws and questioned whether, if the UN is undertaking enforcement action it is still necessary to comply with local laws.

It was suggested that in determining the appropriate level of compliance it is important to look at the rationale for immunity. One participant stressed that the exact authority of the mandate is key to the question of the observance of local laws. The general feeling was that the provision was an important one for the UN to follow, and although the language in the Model SOFA may not be the perfect formulation of the concept, opening that particular language might create more problems than it would solve.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

i) Standards of conduct and accountability of UN peacekeepers

One participant indicated that there is a huge expectation in host States for UN accountability. Another stressed that justice must be seen to be done by the people concerned, in order to strengthen relations with the local population. The analysis of the problem set out in the Background Paper was supported. This noted that various aspects of UN peacekeeping did not exist at the time the model SOFA was developed and therefore were not taken into account. Another participant suggested that there was not a need for more or stronger accountability provisions in the SOFA, just for the UN to properly implement what is already there. A further participant agreed, suggesting that the UN needs a better complaints procedure and the ability to follow up on action taken, stressing that it was a matter of practice not a matter of law.

On accountability of military personnel in UN peacekeeping operations, one participant noted that while the UN has operational control over personnel in military contingents, it does not have command and is therefore not responsible for enforcing accountability. In this case accountability is left to military or civilian courts in the sending State. However, it was questioned to what extent civil courts have jurisdiction over their military personnel operating overseas. Another participant asserted that while discipline is a command responsibility and action should be taken against a Commander or Head of Mission in cases of ill discipline, the UN has some responsibility and the UNHQ and the Secretariat can play a part in ensuring proper discipline. A further participant explained that there is a mechanism by which the UN attempts to ensure that a TCC will take action against a contingent member, the MOU requires the TCC to provide assurances to the UN that their contingent members will be held accountable. He raised the question of whether the sending State can prosecute contingent members for official acts undertaken while serving in a UN peacekeeping operation if the Secretary-General has not waived immunity. Another participant suggested that in the case of the accountability of military contingent personnel, waiver of immunity is not the problem but rather the culture of the contingent, and that more education on sexual exploitation and abuse was needed. She pointed out that the advantage of military justice in civil law countries was that responsibility follows to the person. She advocated the use of field courts martial so that the population can see that justice is done. On the same issue another participant cautioned that if accountability obligations upon a sending State were too high then TCCs would not continue contributing, and suggested this is one reason why developed countries do not contribute troops. He also asserted that if the UN were to indirectly interfere with the military law of States this would also produce a reluctance to contribute, and if the Secretary-General were to waive the immunity of troops this would create significant problems with Member States.

On accountability of civilian personnel in UN peacekeeping operations one participant acknowledged there is a jurisdictional gap. Every year the Secretariat reports to the General Assembly on that gap. Work had been undertaken on criminal accountability within the General Assembly Sixth (Legal) Committee, but had not made great progress. He also raised the issue as to whether the Secretary General must waive immunity in certain circumstances. Another participant raised the issue of UN Police, highlighting that these personnel are not always serving police officers subject to their own codes of conduct, or anything equivalent to military law. She went on to stress that in criminal cases police being subject to their own disciplinary codes was insufficient. There was a general recognition by participants that accountability was a complicated and multifaceted issue for UN peacekeeping. It was recognized that at the least, the Model SOFA should be consistent with the MOU between contributing States and the UN.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

j) Use of force (in self-defence and to protect civilians)

The Co-chair explained that the issues raised by the use of force in UN peacekeeping operations are complex and contentious. Looking across the UN organs – the Security Council, General Assembly and the Secretariat – there is a recognition that UN peacekeepers have the right to use force in self-defence and in defence of the mandate. This is evident in the annual Resolution of the Special Committee on Peacekeeping Operations, which is adopted by the General Assembly, it features in some Security Council resolutions on Rwanda and is articulated in the Capstone Doctrine. He noted that there is a gap of sorts in that the Model SOFA does not speak of the right to use force. While this might not be a legal issue when there is a Ch VII mandate setting out the right to use force, in non-Ch VII mandated missions there may be nothing in the mandate or the SOFA regarding the use of force in self-defence. In these situations, the Rules of Engagement (RoE) do reflect the ability to use force in such circumstances, however the question remains whether the right to use force should be explicitly included in the agreement between the UN and the host State – in the Model SOFA? The legal authority to use force could be different to the RoE. The RoE for operational reasons (eg capability, de-escalation) may not go as far as what is legally permissible, and could be changed during an operation even without a change in the mandate. It was noted that as a matter of interest, a provision to this effect did feature in the non-UN SOFA agreements examined in the course of the Project.

The group recognized the centrality and importance of the issue. Several participants sought to break the use of force down into several layers: self-defence; defence of the mandate; and protection of civilians.

On the category of use of force in ‘self-defence’, several participants commented that the meaning of the phrase and the substance of that right was unclear. One interpretation that arose was that it comprised defence of one’s person and of other UN personnel, however it was noted that this raised the difficult issue of humanitarian space. Another participant commented that the *standard* of self-defence was unclear and that national standards may differ significantly. For that reason he suggested there was a need for an international self-defence standard for UN peacekeepers. Another participant raised the idea of the concept of self defence *including* ‘defence of the mandate’. She suggested that confusion around this issue needed to be addressed, but perhaps somewhere other than the SOFA. Another participant asserted that the RoE have a lot of detail on the use of force and define self defence as ‘defence of self and others’.

On the category of use of force ‘in defence of the mandate’ one participant indicated that within UNHQ there has been a significant amount of discussion on the meaning of the phrase and the substance and existence of the right. He commented that the phrase ‘in defence of the mandate’ is used in none of the mandating resolutions, and its meaning remains unclear. Another participant suggested that if a UN peacekeeping force is being required to *defend* their mandate, then they have failed. They have to set the conditions to *fulfil* the mandate. Another participant questioned the place of *impartiality* in defending a mandate.

On the category of use of force ‘to protect civilians’ several participants commented that following the crisis in Rwanda and Srebrenica, the Council started mandating the use of force to protect civilians, however they do not authorise sufficient resources and instead caveat the activity with the unclear phrases ‘within the areas of deployment’ and ‘within capabilities’. One participant noted that the Brahimi Report reflected upon the use of force to protect civilians and also dealing with

spoilers, however despite UN peacekeepers being confronted by looters, criminal gangs, armed groups and other spoilers this aspect of UN peacekeeping has not been properly addressed.

One participant raised the issue of the use of force in support of national forces. This raises concerns regarding the complicity of the UN in human rights violations. It also raises complicated issues of whether the UN has become a party to the conflict.

With regard to including provision for the use of force in the Model SOFA, most participants were in agreement that use of force issues were so important and complex that they needed to be addressed in the mandate. Some were of the view that it was then for the Secretariat, through development of the RoE to translate the mandated language into clear direction and it was unnecessary to include provisions on the use of force in the SOFA. They cautioned that the SOFA must not be treated as a 'dustbin' and just because an issue was not appropriate to be included in the SOFA did not mean it shouldn't be addressed elsewhere. Others believed that the use of force was such an important issue that it needed to be reflected in the SOFA. They sought clear legal coverage for the use of force by UN peacekeepers. However, it was acknowledged that some elements of the use of force issue remain contentious and may not be ripe for inclusion in the Model SOFA. One participant asserted that the RoE for non-Ch VII missions are insufficient to guide UN peacekeepers in the use of force and that non-Ch VII can become Ch VII missions very quickly. Another highlighted the need for RoE to be better adapted to the specific context. In this regard it was indicated that it would be good to incorporate something general into the SOFA. The observation was made that Security Council non-Ch VII mandating resolutions almost never addressed use of force, a situation which strongly suggests that the right to use force needs to be included elsewhere. The RoE ultimately had to derive from the mandate, which could be a difficult exercise where the use of force was not spelt out. This had been the case in Rwanda when UNAMIR had wished to confiscate arms.

One participant highlighted that in the Background Paper, a distinction is made between the *authorization*, and the *duty or obligation* to use force. In her view, any lack of clarity on the use of force should be addressed not in the SOFA but in the mandate, however if the issue is not when peacekeepers *should* use force, but just if they have a right to do so, then provision in the SOFA might be appropriate. By contrast, she noted that the protection of civilians task touches upon the *duty* to use force.

It was concluded that there is clearly a problem with the use of force by UN peacekeepers. The mandate may not spell it out, the RoE may not spell it out, so it is then up to the UN Secretary-General, USG DPKO, the SRSG of the mission and the Force Commander to try and interpret / understand the substance of any right or obligation to use force. In light of the difficulties faced, his view was that it may not be a bad thing to have some provision for the use of force in the Model SOFA. It was also recognized though that this was a challenging and political issue in the UN, and may be difficult to reduce to a formulation in the Model SOFA.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

k) The activities of a UN peacekeeping mission and the work of the ICC

In introducing this issue, the Co-chair highlighted that UN peacekeepers are deployed in several ICC situation countries, and that the UN has a relationship agreement with the ICC that contained undertaking for cooperation. Peacekeeping operations do some things to assist the ICC – provision of information, witnesses etc. He questioned whether this needed to be acknowledged in the SOFA, noting that most of these issues go back to State sovereignty and what the host State can expect.

There was significant support for the proposal made in the background paper. One participant suggested that due to the evolving nature of ICC laws, it would be good to keep such a provision general. Another participant suggested that it was too narrow to include references only to the ICC and all the international courts (e.g. the Special Tribunal for Sierra Leone) should be taken into account. Several participants also indicated that if the Model SOFA were to incorporate explicit provisions on IHL and IHRL a provision on international criminal law should be included.

In contrast, one participant indicated that he was uncomfortable with the proposal to include a provision on cooperation with the ICC in the Model SOFA as peacekeepers cannot cooperate with the ICC without previous authorization by the Security Council, or if an agreement has been signed with the host State.

Another participant asserted that reference to the Relationship Agreement in the Model SOFA would be useful. However she noted that missions would often have more elaborate frameworks to deal with the ICC, and that these were probably not appropriate for the SOFA. It was noted that the OHCHR framework agreement with the ICC includes practical collaboration including on UN LPs and the use of UN assets. It was expressed that it was unclear whether overall it was advisable to include a provision on the ICC in the Model SOFA because the issues are complex and the law is developing daily.

The issue of peacekeepers falling under the jurisdiction of the ICC was also raised. It was suggested that some States could interpret the current language in the Model SOFA as excluding the jurisdiction of international tribunals. It was suggested that section 46(b) of the Model SOFA needed to be modified to take into account the Rome Statute and the phrase relating to the 'exclusive' jurisdiction of contingent States softened. Another participant clarified that the limitation on prosecuting contingent personnel does not relate to international tribunals, just host States, therefore there was no need to change the provision. A further participant asserted that immunities do not usually apply in International Courts. It was also noted that there are complementarity issues regarding the jurisdiction of the state member and issues regarding the Security Council resolution when the host state is not party to the Rome Statute.

Issue 2: For each of the issues identified in the paper, and in light of UN practice and developments, does the Model SOFA still reflect the requirements of UN peacekeeping?

1) Third party claims and the limited liability of the UN

On the issue of third party claims and limited liability, the Co-chair explained that the Standing Claims Commission set out in the Model SOFA is supposed to include a representative of the host State, however this does not occur in practice. He also mentioned that in the 1990s there were many financial liability claims against the UN from peacekeeping activity in the Balkans. He suggested that there was a strong mismatch between IHRL and UN regulations regarding when the UN will and will not make payments claimants who are members of the host State population.

One participant asserted that there is no useful compliance mechanism in the Model SOFA. In his view, there is a requirement for an ombudsperson, or an administration body of UN created to address the liability issue, otherwise accountability is undermined. Another participant pointed out that the provisions in the Model SOFA concerning liability are closely related to a General Assembly resolution, and therefore would need to be addressed in that forum before the Secretariat would be free to develop anything that alters the situation prescribed by that resolution.

Issue 3: Are there other issues in the Model SOFA, in light of UN practices and developments, that need to be considered?

During the discussion about UN facilities two participants raised the issue of the need for protection for the host State, particularly in respect of the host State's environment and natural resources. The question was raised whether the UN should pay compensation for environmental degradation or absorption of natural resources, such as water in UNAMID. A related issue that was raised was the need to protect the local economy. The recruitment of local personnel was highlighted as something that needed to be undertaken with an appreciation of the need not to drain the local community.

One participant asserted that it was difficult to rely too much on Security Council mandates as those were often poorly drafted, and the product of a political process, so certain elements needed to be included in the Model SOFA. Several participants indicated they were in favour of including a general statement on the applicability of international law. Others supported reference to the inclusion of internationally agreed instruments particularly in the areas of IHRL and environmental protection. A number of participants stressed that the SOFA is not just about privileges and immunities, it is about the rights and duties of a UN force. It was asserted that the Model SOFA should include reference to international standards, improved accountability mechanisms, freedom of movement and the use of force.

One participant stressed the importance of non-state actors (NSAs) in the conflict situations into which UN peacekeeping missions are often deployed. He was of the view that they needed to be recognised in the Model SOFA. He suggested consideration should be given to whether it might be possible for the UN to engage NSAs directly in some kind of informal agreement. A number of other participants countered that the UN is often engaged against NSAs or spoilers, so it would be very difficult to reference them in the SOFA. As the SOFA is agreed between the host State Government and UN, it is unlikely the host State Government would allow inclusion of a provision on NSAs. Another participant noted that the NSA problem was encountered in Sudan (UNMIS). In that instance, the SPLM wanted a SOFA and the UN resisted due to State sovereignty issues and an obligation on the part of the Government to ensure cooperation with the NSAs and supervise compliance with the peace agreement. Similarly, MONUC resisted the attempts of some groups in eastern DRC to become signatories to that SOFA. A further participant raised the issue of peace agreements, noting that peace agreements are not mentioned in the SOFA and yet they are now usually part of the package. UN forces are often part of a peace agreement which is brokered by the Organisation and often includes NSA. NSAs are bound by the peace agreement, therefore there exists consent of all the parties, not just the host State. In his view, the 1990 SOFA reflects the old approach, and a revised Model SOFA should reflect the fact that today peace agreements involve all parties to the conflict. A revised Model SOFA should reflect the existence of a peace agreement that has been signed up to by NSAs.

Another participant had two specific suggestions. He indicated that paragraph 19 of the Model SOFA, which deals with the host State regulating entry into their territory, needs to be further elaborated and clarified. In reference to paragraph 37 of the Model SOFA, he asserted that the carrying of arms should be the prerogative of the Force Commander. If the Force Commander desires his troops to carry weapons, they should be allowed to do so. It was indicated by another participant that often local government officials and even UN mission members were not aware of the SOFA. The suggestion was that both parties should have an obligation to disseminate knowledge of the SOFA to relevant officials and others. This practical suggestion was well received by participants.

Issue 4: Is there a case for considering an update to the Model SOFA and if so, how should this be done?

The general feeling of the participants was to support a review of the Model SOFA along the basic lines set out in the Background Paper and discussed in the Workshop. It was recognised that the essence of the Model SOFA was very good, but that particular areas would benefit from being updated or revised. Several participants expressed the view that the Model SOFA is a template, and should be an ideal, representing best practices. Its purpose should be to act as a guide in negotiations and for that reason it should be maximalist. One participant expressed the view that it is easy for host States to ignore whatever is not in the Model SOFA, he believed that States were likely to generally accept the Model SOFA, but be disinclined to include additional provisions.

A number of participants cautioned that in reviewing the Model SOFA it is important to first determine the purpose of the instrument and then develop criteria for updating. One participant highlighted that in defining the objective of the SOFA it should be kept in mind that the SOFA cannot be expected to answer all legal and practical issues. Another participant indicated that consideration must be given to whether it is necessary just to update what is already in the Model SOFA or add new elements. In her view, rights and duties are important, but while the SOFA might refer to them it is not the place to set them all out.

One participant suggested that the SOFA cannot be used to impose additional obligations on a State and so should not include provisions that are not customary international law or agreed by the State in the UN context. He highlighted the difficult situation of a State being asked to agree a SOFA containing rights deriving from a treaty to which it was not party. He indicated that this was not a problem in the case of IHL, but more difficult in the area of IHRL. This reinforced the importance of referring to application of such standards 'where applicable'. Another participant stressed the need to be careful that the SOFA does not seek to renegotiate the mandate, just implement it. What is derived from the mandate is what should be in the SOFA, however, it is up to the UN to outline rather than Government to interpret. Another participant agreed, but said the SOFA addressed the background framework and operational details which the Security Council mandate rarely ever addressed and should not.

On the issue of format, a few participants supported the idea of a menu of options to adapt the SOFA to various situations. However, it was acknowledged that this was difficult to reconcile with the main functions of a SOFA and not terribly helpful for provisional application. On issues of process, one participant outlined that the formal revision of the Model SOFA would have to follow the same process as the original SOFA. It was pointed out that after requesting the Secretariat to work on the issue, the General Assembly and its Special Committee on Peacekeeping Operations had not negotiated or sought to approve the final Model SOFA.

It was concluded that there was a general sense the current Model SOFA was outdated and could benefit from being updated along the basic lines of the discussions at the Workshop, noting that agreement had not been reached on everything. It seemed that generally the group was happy with the idea of the research and consultation process continuing and moving forward. The participants were informed by the Co-chair that the reports would be reviewed in light of the Workshop discussions, subject to further consideration by a wide range of stakeholders with a view to their finalization in 2011 and provision to the UN peacekeeping community and stakeholders.

Annex A. Experts' Workshop – Participants

Professor Sir Nigel Rodley (Co-Chair)

School of Law, Human Rights Centre, University of Essex. Member of the UN Human Rights Committee since 2001, and served as UN Special Rapporteur on Torture from 1993 to 2001. He is also a Commissioner of the International Commission of Jurists.

Scott Sheeran (Co-Chair)

Lecturer, School of Law, Human Rights Centre, University of Essex. Deputy Director of the LLMs in International Human Rights Law and LLM in International Human Rights and Humanitarian Law. Former Vice-Chair of the UN Sixth (Legal) Committee of the UN General Assembly and legal adviser for the Ministry of Foreign Affairs and Trade of New Zealand.

Professor Ademola Abass

Research Fellow in Peace and Security, UN University Comparative Regional Integration Studies (UNU-CRIS). Also Professor also Professor of International Law and Organisation at Brunel University, West London and an Associate of Conflict, Security and Development Group (CSDG) at King's College in London.

Mr. Clive Baldwin

Has been Senior Legal Advisor with Human Rights Watch in New York since 2007. Previously worked in the OSCE Mission in Kosovo and for Minority Rights Group International.

Dr. Tristan Ferraro

Thematic legal adviser at the International Committee of the Red Cross (HQ Geneva). Head of the ICRC project on occupation and other forms of administration of foreign territory. He has served with the ICRC in the field - in particular as legal coordinator - in Afghanistan/Pakistan and Israël/Palestinian occupied territories.

Colonel Bob Fitzgerald

Irish Defence Forces, retired in 2009. Overseas service included tours as Military Observer in UNTSO, UNTAG and EUMM, deputy battalion commander in UNIFIL and Chief of Staff UNMIL. Also posted as Military Adviser at the Permanent Mission of Ireland to the United Nations in New York.

Mr. Charles Garraway

British Red Cross as an international law adviser. Thirty years experience in United Kingdom Army Legal Services. Has held the Stockton Chair in International Law at the United States Naval War College, Newport, Rhode Island. Member of the International Humanitarian Fact Finding Commission.

Brigadier Philip John Gibbons ONZM

Head and Defence Advisor, New Zealand Defense Staff London. Royal New Zealand Infantry Regiment (RNZIR). Former Deputy Chief of Army and Assistant Chief Strategic Commitments and Intelligence. Commander of the New Zealand contingent in UNPROFOR Bosnia. Chief of Operations for the United Nations Transitional Authority East Timor and Senior National Officer.

Ms. Alison Giffen

Research Fellow and Deputy Director of the Future of Peace Operations, Henry L Stimson Centre, Washington DC. More than a dozen years experience monitoring and advocating on human rights and humanitarian crises.

Professor Geoff Gilbert

School of Law, Human Rights Centre, University of Essex. Editor-in-Chief of the International Journal of Refugee Law. Carried out human rights training on behalf of the Council of Europe and UNHCR in the Russian

Federation (Siberia, the Urals and Kalmykskaya), Georgia, Bosnia-Herzegovina, Croatia, Macedonia and Kosovo.

Professor Françoise Hampson OBE

School of Law, Human Rights Centre, University of Essex. Barrister at Lincoln's Inn. Former independent expert member of the UN Sub-Commission on the Promotion and Protection of Human Rights from 1998-2007. Taught at Staff Colleges or equivalents in the UK, USA, Canada & Ghana. Steering Committee and the Group of Experts for the ICRC's Customary Law Study.

Lt. Col. Muhammad Khalid Khan

Military Legal Adviser, UN Department of Peacekeeping Operations, Office of Military Affairs. Lt Colonel is from Pakistan. Served in Judge Advocate General's Department Pakistan Army as Assistant Judge Advocate General. Served as Military Legal Adviser in UNAMSIL.

Ms. Bela Kapur

Conflict Adviser, United Kingdom's Stabilisation Unit, a tri-departmental unit owned by the Foreign & Commonwealth Office, Department for International Development and Ministry of Defence. Former Political Affairs Officer in the Office of the Under-Secretary-General of DPKO. Worked in Office of the High Commissioner for Human Rights, in human rights components of UN Peace Support Operations in Afghanistan, Iraq and Sudan, and also worked with OHCHR's office in Bogota, Colombia.

Major Kylie. C. Leach

Australian Army Legal Corps. Completed operation tours in East Timor, Afghanistan and Iraq. Exchange with the British Army at the Operational Law Branch, Warminster.

Francesca Marotta

Chief, Methodology, Education and Training Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR). Has worked for OHCHR in Geneva, New York, the Occupied Palestinian Territory, Cambodia, and in a number of other countries. Head of the Secretariat of the United Nations Fact Finding Mission on the Gaza Conflict, established by the United Nations Human Rights Council headed by Justice Richard Goldstone.

Professor Robert McCorquodale

Director of the British Institute of International and Comparative Law in London. Professor of International Law and Human Rights, and former Head of the School of Law, at the University of Nottingham.

Ms. Lorna McGregor

International Legal Adviser at REDRESS. She has litigated cases on behalf of torture survivors before the UN treaty bodies and regional human rights commissions, acted as *amicus curiae* before national and regional courts.

Mr. Luke Mhlaba

Legal Adviser to the African Union – United Nations Mission in Darfur (UNAMID). Served as Legal Officer for the United Nations, including in UNTAC, UNOSOM II, UNMIH and other succeeding missions in Haiti and UNIFIL, and UNMIK. Former Chief of Staff to the Special Representative of the Secretary-General for Cote d'Ivoire.

Professor Ray Murphy

Irish Centre for Human Rights, National University of Galway, Ireland. Faculty of the Pearson Peacekeeping Center, the International Institute for Criminal Investigations and the International Institute of Humanitarian

Law at San Remo, Italy. Former Captain in the Irish Defence Forces and he twice served with the Irish contingent of UNIFIL in Lebanon Field experience with the OSCE in Bosnia.

Lt. Gen. (Retd) Satish Nambiar

Lt Gen Nambiar, retired Deputy Chief of Staff Indian Army. Operational service in North West and East India. Adviser to the Government of Sri Lanka on the peace process in 2002/2003. Lt Gen Nambiar was the first Force Commander of the UN forces in the former Yugoslavia. Director of United Service Institution of India 1996-2008, member of the UN Secretary-General's High Level Panel on Threats, Challenges and Change in 2003-2004 and awarded the Padma Bhushan, a high civilian honour, by the President of India on Republic Day 2009 for his contributions to national security affairs. Member of the International Advisory Council of the Folke Bernadotte Academy and a Senior Adviser of the Challenges Forum.

Judge Daniel David Ntanda Nsereko

Judge Nsereko is from Uganda. Judge of the International Criminal Court, Appeals Division. As an Advocate, represented defendants in criminal and civil cases before Magistrates' Courts, the High Court and the Court of Appeal in Uganda. Served as expert consultant for the Crime Prevention and Criminal Justice Branch of the United Nations Centre for Social Development and Humanitarian Affairs. Professor of Law at the University of Botswana.

Ms. Joanna Oyediran

Sudan Program Officer, Open Society Initiative for Eastern Africa. Senior Human Rights Officer with the United Nations/African Union Hybrid Operation, and previously with the UN Mission in Sudan. Served as Human Rights Officer for the UN Office of the High Commissioner for Human Rights in the Occupied Palestinian Territories

Ms. Mona Rishmawi

Legal Advisor, Office of the UN High Commissioner for Human Rights (OHCHR) and the Head of OHCHR's Rule of Law and Democracy Unit. Editorial Boards of the *International Review of the Red Cross* published by ICRC and the *Refugee Survey Quarterly* published by UNHCR. Advisory Board of the Arab Human Development Report 2008 published by UNDP. Executive Director of the UN International Commission of Inquiry on Darfur established by the UN Security Council resolution 1564. Senior Adviser to two UN High Commissioners for Human Rights: Mary Robinson and Sergio Vieira de Mello. Posted in Iraq with UNAMI, served as the UN Independent Expert on the Situation of Human Rights in Somalia.

Maj General (Retd) Muhammad Tahir

Commissioned in Pakistan Army in 1971, retired in March 2008. Corps of Infantry. As a Lt Col served as Deputy Chief of Operations in UN Mission In Somalia - UNOSOM II. As a Brigadier he has Commanded two Infantry Brigades and also has been Deputy Military Secretary at the GHQ Military Secretary Branch. Commanded two Infantry Divisions and has remained actively engaged in Anti-Terrorist Operations in Waziristan along the Afghanistan Border. Remained Director-General Military Training Directorate at the GHQ, from where he proceeded to UN Mission in Liberia as Deputy Force Commander.

Mr. James Watson

Manager Australian Peace and Stability Operations Centre at the Australian Federal Police's International Deployment Group, having previously occupied the role of AFP General Counsel. Deployed as an operational lawyer with the Australian Defence Force and the Australian Federal Police to Solomon Islands and Timor Leste.

Dr. Nigel D. White

Professor of Public International Law, University of Nottingham. Author and editor of numerous publications in international law and peacekeeping. Co-editor-in-chief of the *Journal of Conflict and Security Law* published by

Oxford University Press; and is co-editor of the UK's contribution to *International Law in Domestic Courts* also published on-line by Oxford University Press.

Dr. Ralph Wilde

Worked in academic roles at the universities of Cambridge, LSE, Yale, Texas, Georgetown and NYU and has been based at UCL since 2002. Executive Council of the International Law Association and a member of the advisory Panel on Public International and Comparative Law. Member of the editorial advisory boards of *Current Legal Problems*, the *International Journal of Statebuilding*, and the journal *Global Change, Peace & Security*, and joint book review editor of the *International and Comparative Law Quarterly*.

Ms. Haidi Willmot

Adviser to the UN Peacekeeping Law Reform Project. She is currently working as a consultant on peacekeeping issues, having just completed postgraduate studies at the University of Cambridge. Previously UN Department of Peacekeeping Operations (DPKO), Office of Military Affairs (OMA).

Ms. Elizabeth Wilmschurst CMG

Associate Fellow, International Law, at Chatham House (the Royal Institute of International Affairs) and a visiting professor at University College, London University. Legal adviser in the United Kingdom diplomatic service between 1974 and 2003, including as the Legal Adviser to the UK mission to the United Nations in New York.

Mr. Erwin Van Der Borcht

Leader of Amnesty International's human rights work across Sub-Saharan Africa. He has worked in various (post) conflict countries including Somalia, Liberia, the Great Lakes region and Angola.

Dr. Leopold von Carlowitz

Project Leader for the German Center for International Peace Operations (ZIF) organizing a rule of law training programme with the UN Department of Peacekeeping Operations for UN lawyers and resource persons from developing countries. Previously served as Head of the Property Verification and Claims Unit and as Policy/Legal Adviser with the UN Interim Administration Mission in Kosovo (UNMIK).